

In the United States Court of Federal Claims

AIMEE L. O'NEIL,

Plaintiff,

v.

THE UNITED STATES,

Defendant.

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No. 07-540C

(Filed: February 1, 2008)

UNPUBLISHED

Aimee L. O'Neil, Martinsburg, West Virginia, plaintiff, *pro se*.

Anuj Vohra, Trial Attorney, Commercial Litigation Branch, Civil Division, *Peter D. Kessler*, Assistant Attorney General, United States Department of Justice, Washington, D.C., with whom were *Jeanne E. Davidson*, Director, *Bryant G. Snee*, Deputy Assistant Director, for defendant.

OPINION

MARGOLIS, *Senior Judge*.

This matter comes before the court on defendant's motion to dismiss, filed September 12, 2007, for lack of subject matter jurisdiction. Plaintiff, Aimee L. O'Neil, seeks \$1 million in damages for intentional infliction of emotional distress, travel fees, rental cars, attorneys, copies, toll calls, loss of employment, forfeited lease, pet boarding, and air travel costs. On November 28, 2007, this Court issued an order requiring the plaintiff to respond to the defendant's motion to dismiss on or before December 21, 2007. Plaintiff did not file any response to the defendant's motion to dismiss. Defendant, the United States, claims this Court lacks subject matter jurisdiction to adjudicate plaintiff's claims because the claims are not within the scope of the Tucker Act, the statute governing this Court's jurisdiction, or in the alternative, the claims are barred under this Court's six-year statute of limitations. After carefully reviewing the briefs and drawing all reasonable inferences in favor of the plaintiff, this Court finds it has no jurisdiction over any of

the plaintiff's claims. Accordingly, defendant's motion to dismiss is **GRANTED**.

FACTS

Plaintiff claims her children, Dylan and Morgan Baker, were forcibly removed from the family home on December 22, 2000 by Catherine Bebee and Gloria Baker. At the time the children were removed from the plaintiff's home, the plaintiff was residing in Holiday, Florida. Plaintiff further claims that after the children were removed from the home they were transported by airplane from the state of Florida. As a result of the children being removed from the plaintiff's home and flown out of Florida, the plaintiff contends that the Federal Aviation Administration ("FAA") is liable for the children's emotional suffering. Claiming the FAA owed the children a duty of care, the plaintiff states that the FAA was required to prevent the children from boarding the airplane. Plaintiff asserts that the FAA was on notice that a duty of care was owed to the children because the children were traveling in their pajamas, without luggage, and were emotionally disturbed from the trauma they had experienced.

Aside from the children's emotional damages, plaintiff also claims the FAA is responsible for the costs associated with the incomplete medical treatment of Morgan Baker. At the time the children were removed, Morgan Baker was receiving specialized medical attention on her leg to avoid metal hardware from being inserted. Because Morgan Baker was taken from the plaintiff's home, the medical treatment for her leg was incomplete.

DISCUSSION

The defendant contends this Court does not have jurisdiction over any of the plaintiff's claims because they do not fall within the scope of the Tucker Act. 28 U.S.C. § 1491(a)(1). The defendant also points out that, irrespective of this Court's jurisdiction, the statute of limitations on plaintiff's claims has run, and the claims are no longer justiciable. See 28 U.S.C. § 2501.

Determining this Court's jurisdiction starts by reviewing the complaint. Kawa v. United States, 77 Fed. Cl. 294, 298 (2007) (citing Holley v. United States, 124 F.3d 1462, 1465 (Fed. Cir. 1997)). When deciding a motion to dismiss for lack of jurisdiction under 12(b)(1) of the Rules of the Court of Federal Claims ("RCFC"), this Court is obligated to assume all factual allegations to be true and must construe all reasonable inferences in the plaintiff's favor. Hall v. United States, 74 Fed. Cl. 391, 393 (2006) (quoting Henke v. United States, 60 F.3d 795, 799 (Fed. Cir. 1995)).

A. RCFC 12(b)(1) Standard as Applied to a *pro se* Litigant

A *pro se* litigant is entitled to greater leniency than a licensed attorney; in particular, when ruling on a motion to dismiss "[i]t is settled law that the allegations of ... a [*pro se*] litigant, however

inartfully pleaded[.] are held to less stringent standards than formal pleadings drafted by lawyers[.]” Minehan v. United States, 75 Fed. Cl. 249, 253 (2007) (citing Hughes v. Rowe, 449 U.S. 5, 9-10 (1980) (internal quotations omitted); see also Kelley v. Sec’y, U.S. Dep’t of Labor, 812 F.2d 1378, 1380 (Fed. Cir. 1987). While the formalities associated with filing claims are not strictly applied to *pro se* litigants, the litigant must still satisfy this Court’s jurisdictional requirements. Kelley, 812 F.2d at 1380; Biddulph v. United States, 74 Fed. Cl. 765, 767 (2006). Therefore, as with every motion to dismiss under RCFC 12(b)(1), the plaintiff bears the burden of establishing this Court’s jurisdiction by a preponderance of the evidence. Cubic Def. Sys., Inc. v. United States, 45 Fed. Cl. 239, 245 (1999) (citing Cedars-Sinai Med. Ctr. v. Watkins, 11 F.3d 1573, 1583 (Fed. Cir. 1993)).

Where the *pro se* plaintiff has not clearly enunciated a claim in the complaint there is “no duty on the part of the trial court” to articulate a claim for the plaintiff. Scogan v. United States, 33 Fed. Cl. 285, 293 (1995) (quoting Clark v. Nat’l Travelers Life Ins. Co., 518 F.2d 1167, 1169 (6th Cir. 1975)).

B. Jurisdiction

Plaintiff has not satisfied the jurisdictional requirements of this Court. Specifically, the Tucker Act gives this Court

jurisdiction to render judgment upon any claim against the United States founded either upon the Constitution, or any Act of Congress or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases *not sounding in tort*.

28 U.S.C. § 1491(a)(1) (emphasis added). Therefore, plaintiff’s claims for intentional infliction of emotional distress, travel fees, rental cars, attorneys, copies, toll calls, loss of employment, forfeited lease, pet boarding, and air travel costs are tort claims and not within this Court’s jurisdiction.

Moreover, even if this Court had jurisdiction over plaintiff’s claims, the statute of limitations set forth in 28 U.S.C. § 2501 bars plaintiff’s claims. Specifically, § 2501 states that “every claim of which the United States Court of Federal Claims has jurisdiction shall be *barred unless the petition thereon is filed within six years after such claim first accrues*.” 28 U.S.C. § 2501 (emphasis added). Plaintiff filed a complaint in this Court on July 17, 2007. Her claims arose from an incident that occurred in December 2000. The six-year statute of limitations barred plaintiff’s claims in December 2006, and therefore, this Court has no jurisdiction over plaintiff’s claims.

C. 5th Amendment Takings Claim

The Fifth Amendment provides that “private property [shall not] be taken for public use without just compensation.” U.S. Const. amend. V. For a Fifth Amendment takings claim to be compensable, the taking must arise as “the direct, natural, or probable result of an *authorized* activity” by government officials. Ridge Line, Inc. v. United States, 346 F.3d 1346, 1355 (Fed. Cir. 2003) (emphasis added) (citing Columbia Basin Orchard v. United States, 132 Ct. Cl. 445 (1955)). Here, plaintiff alleges that the defendant’s actions were unauthorized. Because there was no authorized government activity, there is no compensable Fifth Amendment takings claim.

CONCLUSION

Defendant’s motion to dismiss is **GRANTED**. The Clerk will enter judgment for the defendant and dismiss this case. Each party shall pay their own costs.

LAWRENCE S. MARGOLIS
Senior Judge, U.S. Court of Federal Claims